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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MIAMI, FLORIDA Date: **AUG 12 2008**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so that she may remain in the United States with her husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director* dated December 11, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in failing to consider all of the factors establishing extreme hardship to the applicant's husband. Counsel submitted additional evidence with the appeal relating to the emotional and financial hardship the applicant's husband would experience if she were removed from the United States. This evidence includes an affidavit from the applicant's husband, psychological evaluations and physician's letters concerning the applicant's husband, bank statements, and copies of passports of the applicant's husband's U.S. Citizen family members. The record also includes evidence submitted with the waiver application, including tax returns and a letter from the applicant's husband's employer, information on conditions in Colombia, and documentation concerning the condominium owned by the applicant and her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
- (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
-
- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-five year-old native and citizen of Colombia who entered the United States on April 13, 1999 as a B2 visitor for pleasure and remained in the United States beyond her period of authorized stay. The record further reflects that the applicant's husband is a forty-four year-old native and citizen of the United States. The applicant married her husband on October 2, 2004 and they currently reside together in Pompano Beach, Florida.

Counsel asserts that the applicant's husband would experience extreme emotional, physical, and financial hardship if the applicant were removed to Colombia because the applicant has a "positive outlook on life" and has helped provide emotional stability in his life. *See Brief in Support of Appeal* at 5. Counsel states that the applicant's husband suffered emotional abuse as a child and has sought treatment for clinical depression at various times, including when he divorced his first wife and later when he lost his job. Counsel states, "He is someone who has demonstrated the *inability* to deal with dramatic and negative changes in life without becoming mentally ill as a result." *Brief* at 4. Counsel further states that if he relocated to Colombia with the applicant, the applicant's husband would suffer extreme hardship due to loss of his employment and the political and economic conditions there. *Brief* at 11-13. Counsel additionally states that due to his specific circumstances, separation from the applicant would result in depression and anxiety rising to the level of extreme hardship for the applicant's husband. *Brief* at 9.

Counsel claims that due to a fear of being separated from the applicant, the applicant's husband has been having emotional and physical difficulties and refers to letters from his physician and a psychologist who has treated him for depression as well as a separate psychological evaluation conducted in December 2006. Counsel states that the applicant's husband sought treatment for symptoms of depression during and after his divorce from his former wife and again when he lost his job. *Brief* at 4. A letter from the treating psychologist states that the applicant's husband received individual psychotherapy from Fall 1991 through the end of 1992 and from March 1997 through September 1998. The letter further states,

In the first round of therapy sessions, [REDACTED] presented with his current wife to address the increasing unworkable and destructive aspects of their marriage. The disintegration of their relationship served to reactivate significant childhood unresolved trauma Mr. [REDACTED] began to experience significant depression and anticipatory anxiety and dread. Issues of feared abandonment, imminent loss, and rejection predominated his thoughts. . . . *Letter from [REDACTED]* dated January 2, 2007.

The letter described a second round of counseling for the applicant's husband when he was experiencing "career and relationship instability." The letter states that the applicant's husband discontinued counseling when his work situation stabilized, but that he had issues that still needed to be resolved and "his departure from counseling at that time was ill-advised and inopportune." The letter further states that the current situation "could likely once again reactivate his issues of separation anxiety, loss, rejection, and abandonment" and that he "could readily descend once again into a tailspin of depression, lethargy, amotivational syndrome, ambivalence, and generalized anxiety disorder." The letter further states that after several interviews conducted after the applicant's immigration problems arose, it seems that the applicant's husband "is experiencing anticipatory dread and anxiety, some depression and reduced motivation." *See Letter from [REDACTED]*

A separate psychological evaluation conducted in December 2006 further states that the applicant's husband, who was sent to live with his emotionally abusive father when he was ten years old after his parents divorced, attempted to commit suicide when he was thirteen years old and requested and was granted legal emancipation at the age of fifteen. *See Evaluation by [REDACTED]* dated January 1, 2007, at 2-3. The evaluation further states that the applicant's husband is currently suffering from post-traumatic stress disorder, severe anxiety, and depression and "If [REDACTED] is forced to re-locate to Colombia (or, in the

alternative he loses his wife [REDACTED] would predicatively lapse into another major depressive episode.” *Id.* at 6.

Counsel asserts that the applicant’s husband would suffer extreme hardship if he relocated to Colombia due to the civil strife there and the high level of violent crime, including kidnapping. *Brief* at 6-7. Evidence submitted with the waiver application indicates that U.S. Citizens have been warned about traveling to Colombia due to security concerns. A travel advisory issued by the U.S. Department of State states, “Violence by narcoterrorist groups and other criminal elements continues to affect all parts of the Country. . . . Citizens of the United States and other countries continue to be victims of threats, kidnappings, and other criminal acts.” *See Travel Warning for Colombia* dated January 18, 2006. Other documentation submitted with the waiver application states that travel to Colombia “still can involve considerable risk,” in particular travel between cities and towns, due to the lack of road security in many areas. *See U.S. Department of State, Consular Information Sheet*, dated August 15, 2005. The applicant’s husband states in his affidavit,

The overall situation there causes me a lot of anxiety. I am, frankly, really scared to live there. Even when we visited [REDACTED] family, we stayed inside most of the time. [REDACTED] rented a car because she says the cab drivers work for the various guerrilla groups and are the first ones to turn an American over.

Counsel further notes that the applicant’s husband has been diagnosed with post-traumatic stress disorder, a condition that is likely to be exacerbated if he relocated to Colombia and lived in fear of kidnapping or other violent crime.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband would experience extreme hardship if she is prohibited from remaining in the United States. The record contains evidence that the applicant’s husband is experiencing anxiety and depression over the prospect of being separated from the applicant or being forced to relocate to Colombia. It further establishes that he would likely suffer from a severe depressive episode if the applicant is removed from the United States. There is sufficient documentation on the record to show that his emotional health has been deemed tenuous by two mental health professionals. It therefore appears that if the applicant’s husband relocated to Colombia and lost his career opportunities and ties to his family, or remained in the United States and was separated from the applicant, he would suffer emotional hardship beyond that which is normally experienced by family members as a result of removal or deportation.

The record also establishes that the applicant’s husband and would suffer physical and financial hardship if he were to relocate to Colombia. The record contains evidence that the applicant’s husband has worked hard to succeed in his career in the United States and would have to leave his job if he relocated to Colombia. Evidence on the record also establishes that economic, political, and social conditions in Colombia, including an ongoing guerrilla insurgency and an extremely high rate of violent crime, would create additional hardship for the applicant’s husband. Although financial hardship and a decline in standard of living are common results of deportation and do not in themselves constitute extreme hardship, the financial hardship to the applicant’s husband, when combined with the emotional effects of being separated from his family and the potentially dangerous situation he would face in Colombia, would constitute extreme hardship to them if he remained in the United States and the applicant were removed or if they both moved to Colombia.

When considered in the aggregate, the factors of hardship to the applicant's husband constitute extreme hardship. This finding is largely based on evidence submitted with the appeal that documents the emotional and physical distress experienced by the applicant's husband over the prospect of being separated from the applicant and losing the stability he has enjoyed since they began living together. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether a waiver is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's unlawful presence in the United States from 1999 until she filed her application for adjustment of status in December 2004. The favorable factors in the present case are the extreme hardship to the applicant's husband; the applicant's lack of a criminal record; and her stable employment history and property ties in the United States.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.